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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,625

06/12/2008

Petrus Jacobus Delport

A311061.3US

1288

36536 7590 09/25/2009  
WYATT, TARRANT & COMBS, LLP  
1715 AARON BRENNER DRIVE  
SUITE 800  
MEMPHIS, TN 38120-4367

EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

09/25/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,625	<b>Applicant(s)</b> DELPORT ET AL.	
	<b>Examiner</b> JAMES N. SMALLEY	<b>Art Unit</b> 3781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/17/2008</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

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## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, from which the remaining claims depend, limits "an appropriately positioned rivet." It is not clear what the metes and bounds of the term "appropriately" comprise in this context. In other words, it is not exactly clear what type of positioning results in an appropriate locating of the rivet on the top wall of the container.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine US 4,979,635 in view of Sanchez US 4,681,238.

Levine '635 teaches a beverage container comprising an opening tab (12) with a lip (18) and a lifting portion (unlabeled) fixed to an end panel by a rivet (14), a rupturable score line (8), a resealing shield (16) which is rotated by rotation of the opening tab into sealing contact with the opening.

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The reference, as applied, teaches all limitations substantially as claimed, but fails to teach the shield being located on the inside surface of the lid.

Sanchez '238 teaches it is known to locate a pivotable shield/resealing cover on the inside surface of a beverage container end panel, which is rotated into sealing contact with the opening by rotation of the opening tab, connected thereto by a central rivet (27).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the beverage container of Levine '635, locating the resealing cover/shield on the inside surface of the container, as taught by Sanchez '238, motivated by the benefit of preventing it from becoming dirty through exposure to ambient conditions, and which also prevents it from dragging dirt which may be located on the top surface of the beverage container into the opening, upon rotation. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 2, Examiner notes figure 4, whereby it is shown the flap is displaced to one side of the opening, which will permit rotation of the shield into place on the opposite side in a clockwise rotation.

Regarding claim 3, Sanchez '238 teaches a shaft (71) extending through the rivet (67), which results in rotation of the shield by rotation of the lift tab.

Regarding claim 4, the end face (67) of the rivet in Sanchez '238, figure 5, creates a seal which inherently prevents escape of gas.

Regarding claim 5, the shield of Sanchez '238 is formed of a sheet metal (as defined by the cross-hatching consistent with metal, per MPEP 608.02), and is inherently flexible, as shown from the bending action in figures 2-4 therein. The end panel (29) is slightly shallow dome-shaped, as defined between the upwardly-sloped portion (43).

Regarding claim 6, Levine '635 shows the shield and pull tab are disposed along the same axis line, In figures 1 and 3.

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***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:  
See PTO-892 citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/  
Supervisory Patent Examiner, Art Unit  
3781

/James N Smalley/  
Examiner, Art Unit 3781